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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND)	Supreme Court No. R-12-____
ARIZONA RULES OF CIVIL PROCEDURE))	Petition to Amend
)	Arizona Rules of Civil Procedure
_____))	

Pursuant to Rule 28, Rules of the Supreme Court, Barbara Atwood and
Timothy Berg, Commissioners with the Uniform Law Commission, respectfully
petition this Court to adopt amendments to the Arizona Rules of Civil Procedure

to implement the Uniform Interstate Depositions and Discovery Act, as set out in Appendix A.

I. Background and Purpose of the Proposed Rule Amendments

The Uniform Law Commission promulgated the Uniform Interstate Depositions and Discovery Act in 2007. The Act provides an efficient and inexpensive procedure for litigants to depose out-of-state individuals and for the production of discoverable materials that may be located out of state. With the continuing increase in litigation involving parties and witnesses from different states, uniform interstate discovery procedures have become essential.

Under UIDDA, litigants can present a subpoena issued by a court in the trial state to a clerk of the court located in the state where discoverable materials are sought. Once the clerk receives the foreign subpoena, the clerk issues a subpoena for service upon the person or entity to which the original subpoena is directed. The newly-issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel. While the clerk's role is purely ministerial, the issuance of the subpoena is sufficient to invoke jurisdiction over the deponent.

The Act requires minimal judicial oversight and eliminates the need for obtaining a commission, letters rogatory, or local counsel in the discovery state, or the filing of an independent enforcement action during the discovery phase of litigation. The Act recognizes that the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction. For that reason, discovery authorized by the subpoena must comply with the state in which it occurs. Motions to quash, enforce, or modify a subpoena issued pursuant to the Act must be brought in the discovery state under the rules of that state.

Significantly, at least eighteen states thus far have adopted the Act by legislation or court rule, including our neighboring states of Colorado, New Mexico, and Utah. A current listing of legislative enactments can be found at the ULC website, [http://nccusl.org/LegislativeFactSheet.aspx?title=Interstate Depositions and Discovery Act](http://nccusl.org/LegislativeFactSheet.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act). Since Arizona lawyers and litigants will benefit from the availability of the streamlined cross-border discovery procedures now available in many other states, Arizona should implement the same procedures for incoming discovery matters.

Significantly, several states have chosen to adopt the Act through amendments to court rules rather than as legislation. *See, e.g.*, RULE 45(i), IDAHO R.

CIV. PRO.; K.S.A. 60-228, KAN. R. CIV. PRO.; RULE 28(c), MONT. R. CIV. PRO.; RULE 1-045.1, N.M. R. CIV. PRO. Petitioners believe the more appropriate route in Arizona is by court rule because of the Act's close connection with court processes and discovery procedure. Among the states that have implemented the Act by court rule, some have chosen to amend Rule 28 (governing persons before whom depositions may be taken) and others by amendment of Rule 45 (governing subpoenas). While the petitioners propose that UIDDA be incorporated by adding a new Rule 45.1 to the Arizona Rules of Civil Procedure, the Court may prefer to implement the Act through another method.

II. Contents of Proposed Rule Amendment

The proposed amendments to the Rules of Civil Procedure are set out in Appendix A. The Act with full commentary from the Reporter, Professor Tom Mauet, is attached as Appendix B.

RESPECTFULLY SUBMITTED this 10th day of January, 2012.

UNIFORM LAW COMMISSION

By: /s/ Timothy Berg
Barbara Atwood
Timothy Berg